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WORK PROGRAMME ON RESTRICTIVE BUSINESS PRACTICES INCLUDING TECHNICAL ASSISTANCE, ADVISORY AND TRAINING PROGRAMMES ON RESTRICTIVE BUSINESS PRACTICES, AND PREPARATION OF THE THIRD REVIEW CONFERENCE

Technical assistance, advisory and training programmes on restrictive business practices

Note by the UNCTAD secretariat

CONTENTS

		Paragraphs
	Introduction	1 - 4
I.	Progress report on UNCTAD technical cooperation activities on restrictive business practices	5 - 25
II.	Preparation of regional projects of technical cooperation	26 - 27
III.	Conclusions	28 - 37

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INTRODUCTION

1. It is recalled that the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices 1/ (the Set) adopted by the General Assembly in 1980, in provision 6 and 7 of Section F, related to measures to be undertaken at the international level, calls for:

> "6. Implementation within or facilitation by UNCTAD, and other relevant organizations of the United Nations system in conjunction with UNCTAD, of technical assistance, advisory and training programmes on restrictive business practices, particularly for developing countries:
>
> (a) Experts should be provided to assist developing countries, at their request, in formulating or improving restrictive business practices legislation and procedures;
>
> (b) Seminars, training programmes or courses should be held, primarily in developing countries, to train officials involved or likely to be involved in administering restrictive business practices legislation and, in this connection, advantage should be taken, inter alia, of the experience and knowledge of administrative authorities, especially in developed countries, in detecting the use of restrictive business practices;
>
> (c) A handbook on restrictive business practices legislation should be compiled;
>
> (d) Relevant books, documents, manuals and any other information on matters related to restrictive business practices should be collected and made available, particularly to developing countries;
>
> (e) Exchange of personnel between restrictive business practices authorities should be arranged and facilitated;
>
> (f) International conferences on restrictive business practices legislation and policy should be arranged;
>
> (g) Seminars for an exchange of views on restrictive business practices among persons in the public and private sectors should be arranged.
>
> "7. International organizations and financing programmes, in particular the United Nations Development Programme, should be called upon to provide resources through appropriate channels and modalities for the financing of activities set out in paragraph 6 above. Furthermore, all countries are invited, in particular the developed countries, to make voluntary financial and other contributions for the above-mentioned activities."

2. Moreover, in the agreed conclusions 2/ of its twelfth session in 1993, the Intergovernmental Group of Experts on Restrictive Business Practices:

"1. Called upon intergovernmental organizations and financing programmes - as well as member States through voluntary financial and other contributions - to provide the appropriate resources for the activities mentioned below; and to inform the secretariat of UNCTAD on programmes under which application of technical assistance could be made;

"2. Requested the UNCTAD secretariat to continue to provide, upon request and within available resources, technical assistance, advisory and training services in the area of competition policy to developing countries and to countries in transition, and to report on its activities so as to enable the Intergovernmental Group of Experts at its thirteenth session to evaluate these activities;

"3. Called upon intergovernmental organizations to coordinate and cooperate in the area of competition policy with a view to avoiding unnecessary duplication of work and to maximize results within existing limited resources."

3. Reference is also made to the statements made by various delegations, especially those from Latin America and the Caribbean, during the twelfth session of the Group of Experts, requesting the secretariat to prepare a project document on regional technical cooperation, outlining programmes at the governmental and intergovernmental levels that could be used with a view to obtaining adequate funding for future programmes.

4. Accordingly, this note contains a progress report (cf. section I) on technical cooperation activities of the UNCTAD secretariat in the period since the twelfth session of the Intergovernmental Group of Experts 3/ and a summary of projects of technical cooperation in preparation, including the secretariat's endeavours to obtain financing for a regional technical cooperation project on the promotion and protection of competition.

I. PROGRESS REPORT ON UNCTAD TECHNICAL COOPERATION ACTIVITIES ON RESTRICTIVE BUSINESS PRACTICES

5. In line with the agreed conclusions of the Intergovernmental Group of Experts on Restrictive Business Practices at its twelfth session (agreed conclusions, section D), the UNCTAD secretariat has continued to provide, upon request and within available resources, technical cooperation, advisory and training services in the area of competition policy.

6. The main thrust of the secretariat's action can be described as follows:

(a) Sensitizing Governments

(i) The holding of introductory seminars bringing together experts from countries having experience in the area of competition policy with government officials and legislators, as well as academics, business and consumer-oriented circles, with the aim of sensitizing Governments to the need to adopt appropriate domestic competition legislation;

(ii) Some Governments may request preparation of a study on restrictive business practices and the competition situation in their markets, before embarking upon further policy initiatives in this area;

(b) Drafting of legislation

(i) Upon request, once the Government has decided to embark on preparation of competition legislation, one (or more) foreign legal experts might be engaged on a consultancy basis to provide advisory services with respect to the drafting of such legislation;

(ii) The draft law can then be circulated for advice and commentary by other experts in this area.

(c) Institution building

As competition legislation always involves the setting up of a Competition Authority responsible for the implementation and monitoring of the law, there might be need for:

(i) Advisory services in setting up of the Control Authority and its initial functioning;

(ii) Training of the officials responsible for implementing the law. This could be done through exchange of personnel with other Competition Authorities with previous experience in this field;

(iii) Workshops on specific issues with officials responsible for implementation of the law from other countries;

(iv) Study tours with foreign Control Authorities; on-the-job training, etc.

7. Over the period under review, UNCTAD's action covered all three types of activity described above.

A. Ghana national project

8. UNCTAD has been assisting Ghana since 1991 to implement its competition policy, specifically to draft legislation to control restrictive business practices and to establish a Commission to administer and enforce the law.

9. Early in 1993, the Government of Ghana informed UNCTAD that a draft bill entitled "The Trade Practices Act" had been prepared. However, before the bill could be tabled in Parliament, a seminar had to be held in Accra to brief the business community. Thus, a seminar was organized from 5 to 6 April 1993. Experts from the United Kingdom and Germany participated.

10. The UNDP informed UNCTAD that the project was terminated on 31 December 1993 and that Phase III could only be implemented under a new programme, possibly under the Umbrella "Capacity-Building for Enterprises". For this purpose, the Ministry of Trade had to make a fresh request to the UNDP.

11. A mission was therefore undertaken (6-9 April) to assist the Ministry of Trade, including the Inter-Ministerial Committee and the Attorney-General's Chambers. A project proposal to be presented to potential donors is being developed by the UNDP and, inter alia, the Ministry of Trade to be incorporated in the draft on a Comprehensive National Programme of Action for Capacity Building. Further, the Ministry would also seek bilateral assistance. A strong appeal was made to UNCTAD to assist in every way possible, especially if these efforts were to fail.

B. Seminar on Competition Policy and Restrictive Business Practices in Kuala Lumpur (Malaysia), 25-27 January 1994

12. This national seminar for Malaysia was organized in cooperation with the Ministry of Domestic Trade and Consumer Affairs and the Institute of Diplomacy and Foreign Relations of Malaysia.

13. The seminar was attended by 44 participants from Government, from public and private sectors, as well as academic circles and consumer associations. The UNCTAD team of two staff members was strengthened by three country experts, from the Australian Trade Practices Commission, the Norwegian Competition Authority and the Corporate Law Authority of Pakistan respectively, who all made substantive presentations and participated in the debates.

14. At the closing meeting, it was agreed to recommend the adoption of competition legislation and establishment of a Competition Authority in Malaysia. Following the seminar, the Minister responsible decided to start preparations for a law to be adopted before the end of 1994. Further assistance from UNCTAD in drafting the law and in institution-building will be requested in due course. At the time of writing, UNCTAD has agreed to participate in advisory meetings in September 1994 with the Malaysian authorities responsible for drafting the legislation. For this purpose, the UNCTAD representative will be accompanied by a high-level competition policy expert from the Republic of Korea.

C. Seminar for Pacific Forum countries, Suva (Fiji), 1-3 February 1994

15. The seminar, which was organized in cooperation with the Forum secretariat whose headquarters are located in Suva, Fiji, was attended by some 19 participants from Fiji, and 1 participant each from Cook Islands, Kiribati, Papua New Guinea, Solomon Islands, Tonga and Samoa, at the invitation of UNCTAD. Foreign experts from Norway, Australia and New Zealand made presentations, as well as the two UNCTAD staff members present and representatives of the Forum secretariat.

16. A list of "Conclusions and Recommendations" was adopted, in which it was agreed, inter alia, that further action in this area should include:

(i) A survey of the state of competition in the developing countries of the region;

(ii) A further seminar with wider participation to advance the discussion and promote further adoption of competition policy;

(iii) Information exchange between Forum Island Countries (FICs) on developments related to competition policy; and

(iv) Technical cooperation to FICs in the area of competition policy.

It was also agreed that the outcome of the seminar would be presented to the meeting of the Committee on Regional Economic Issues and Trade (CREIT) of the Pacific Forum secretariat in early May 1994, to seek its support for carrying forward the recommendations of the seminar.

D. China Workshops on Competition and Restrictive Business Practices (Shanghai (14-16 March 1994) and Shenzhen (21-23 March 1994))

17. Two workshops were held by UNCTAD in cooperation with the State Administration for Industry and Commerce of the People's Republic of China. The Federal Cartel Office of Germany and the Office of Fair Trading of the United Kingdom provided experts who participated in the workshops, which were each attended by around 100 participants from Government administrations, the legal profession and academic circles.

18. The workshops covered such subjects as: the relevance and functions of competition policy in market-oriented economic reforms in developing countries; the specific experiences of China in this area; a presentation of the new Chinese Law for Countering Unfair Competition; a presentation of the German and United Kingdom competition laws and administrative mechanisms; the detection of collusive tendering; vertical restraints and abuses of market power; concentration of market power; and regulation of natural monopolies. At the close of the presentations on these subjects, round-table discussions were held in which the participants demonstrated keen interest in and good understanding of these issues. During the workshops, requests were also made for follow-up action, in particular for the training of Chinese officials who will be responsible for the implementation of the new Act for Countering Unfair Competition.

E. The World Bank/UNCTAD Conference on Competition Policy and International Trade, Bogotá (Colombia), 16-17 June 1994

19. This Conference was organized jointly by the World Bank, the Superintendency of Industry and Commerce of Colombia and UNCTAD. The Conference brought together the heads of Competition Authorities of Colombia, Chile, Peru, Venezuela and Mexico, with various officials of the World Bank, UNCTAD, the European Union and renowned anti-trust lawyers and trade law experts. Presentations were made on such issues as Competition Policy and its

Relevance for Economic Development; the Interface Between Trade, Competition and Investment; Anti-Dumping, State Subsidies and Competition; Administration and Experience of Competition in Andean Pact Countries in Chile and in Mexico; Competition Policy under Nafta; and Alternative Models to Resolving Competition, Trade and Investment Disputes. A keen interest in further training and experience sharing from Competition Authorities in Latin America was demonstrated at the Conference. Both UNCTAD and the World Bank agreed to strengthen cooperation in this area in order to respond to these needs, resources permitting.

F. Seminar on Competition Policy and Restrictive Business Practices in Kingston (Jamaica), 20-21 June 1994

20. This was primarily a national seminar, organized by UNCTAD with the Fair Trading Commission of Jamaica and the Ministry of Industry, Tourism and Commerce for the legal profession, business and consumer circles, in which representatives from the Bahamas and Belize also participated. The Executive Director of the Fair Trading Commission of Jamaica made a detailed presentation of his Office's first year of activity. The Director of the Mona Institute of Business presented a study, which he had prepared for UNCTAD, on the difficulties and opposition encountered in the period leading to the adoption of the Jamaican Competition Law in 1993. This study will be reproduced by UNCTAD and used as a basic document for technical cooperation in small developing countries like Jamaica which are envisaging the adoption of a competition law. The Chairman of the Norwegian Competition Authority delivered a lecture on the Norwegian experience in this area.

G. Seminar on Competition Policy and RBPs in Port of Spain (Trinidad and Tobago), 23-24 June 1994

21. This national seminar was organized in cooperation with the Ministry of Trade and Industry and the Ministry of Finance of Trinidad and Tobago. Directed at a wide audience of government officials, heads of utilities and State enterprises, business circles, as well as consumer organizations, the aim of this seminar was to convince the Government of the need to pass legislation on competition as soon as possible. The Chairman of the Norwegian Competition Authority, and the Executive Director of Jamaica's Fair Trading Commission made presentations on their experiences. The seminar recommended that a Competition Law be prepared for Trinidad and Tobago.

H. Zambia national project

22. The Zambia/UNDP Project (ZAM/92/026/A/01/99) for Preparatory Assistance for Capacity-Building to the Ministry of Commerce, Trade and Industry, has already followed stages (a) and (b) described above. Following introductory seminars in February 1991, work on drafting competition legislation began in 1993, and a Fair Trade and Competition Act has now been adopted.

23. At the time of writing, a mission by a competition expert engaged by the UNCTAD secretariat is planned to advise the Ministry on the implementation of competition policy in Zambia.

I. Seminar on the Enforcement of Competition Laws, Manila (Philippines)

24. The German Foundation for International Development (DSE), in cooperation with the Ministry of Economics and the Federal Cartel Office (FCO) of Germany and UNCTAD organized this seminar, in cooperation with the Government of the Philippines, from 15-19 August 1994 in Manila.

J. Seminar on Development of Competition Policy in Chile and Germany in the Light of International Experiences

25. A further seminar organized by the German Foundation for International Development (DSE), the Federal Cartel Office of Germany and UNCTAD is scheduled to take place in November 1994, in Santiago de Chile, to share experiences in the control of restrictive business practices between the Chilean and German Competition Authorities.

II. PREPARATION OF REGIONAL PROJECTS OF TECHNICAL COOPERATION

26. It is recalled that, at the twelfth session of the Intergovernmental Group of Experts on Restrictive Business Practices, the secretariat was called upon by various delegations, especially from Latin America and the Caribbean, to prepare a project document on regional technical cooperation on competition policy and restrictive business practices. Accordingly, in the first quarter of 1994, the secretariat prepared a detailed project for the protection and promotion of free competition in the Latin American and the Caribbean region. The objectives of the project are:

(a) Support for national legislative processes, both in enacting and reforming competition legislation and on allied topics, such as consumer protection;

(b) Cooperation in the establishment of the offices of the competent authorities, including staff training;

(c) Contribution to the creation of what might be termed a "culture of competition" in the region by publicizing the importance, scope and mechanisms of the legislation among the sectors concerned: Government, business sector and the consumer public (especially the poorest sectors).

27. The proposed budget of the project is US$ 736,000 and it is designed to be executed over a period of three years. The secretariat has circulated the project proposal to intergovernmental organizations and financing programmes, as well as to member States, which might be interested in participating through voluntary financial and other contributions, in the effective implementation of the project. In preparing this project proposal, the UNCTAD secretariat requested specific information from Governments of Latin America and the Caribbean countries, in a note dated 24 January 1994, which contained a detailed questionnaire on "the status of national legislation and machinery relating to the control of restrictive business practices for the purpose of promoting and protecting free competition". The replies to the questionnaire helped in the identification and quantification of the requirements in the region.

III. CONCLUSIONS

28. It will be recalled that by 1992 the UNCTAD secretariat had received requests for assistance from 63 countries. 4/

29. In 1993, the UNCTAD secretariat was able, within its limited financial resources (as reported in TD/B/RBP/97), to respond to requests from nine countries and one subregional grouping (CARICOM). These involved organizing a national seminar in India; a subregional seminar in Guatemala in which El Salvador, Guatemala and Honduras participated; a subregional seminar in Panama in which Costa Rica, Nicaragua and Panama participated; a national seminar in Egypt; and the CARICOM seminar in which the following countries participated: Antigua and Barbuda, the Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica and Montserrat.

30. In 1994 the secretariat has continued to respond to the accumulated requests: holding introductory seminars (China, Malaysia, Pacific Forum countries, and Trinidad and Tobago); assisting in the drafting of legislation (Ghana); holding workshops aimed at institution-building and review of experiences (in Colombia for five Latin American countries, and Jamaica); and helping to organize study tours with foreign RBP control authorities (Ghana).

31. In undertaking these activities, developing countries have benefited greatly from cooperation offered by the Governments of Australia, Canada and the United Kingdom of Great Britain and Northern Ireland (sending of experts to participate in seminar at own cost); Jamaica (release of expert to participate in seminar); Germany (release of expert to participate in seminars, providing in-house attachment and training); New Zealand (sending of expert to participate in seminar at own cost); Norway (sending of experts to participate in seminars at own cost, provision of funds for technical cooperation); and Pakistan (release of expert to participate in seminar). The generous contribution of the Government of Norway in particular should be underlined; apart from sending experts to participate in several seminars at its own cost, it contributed again to UNCTAD's RBP Trust Fund INT/86/A01 in 1992 and again in 1993, thus enabling UNCTAD to hold several seminars and advisory missions in the Caribbean and Central American regions during the period under review. Member States have also benefited from some extra-budgetary funding provided by UNDP and from cooperation with the World Bank in organizing the seminar in Colombia.

32. More seminars or workshops are planned in the near future in Chile, Malaysia and the Philippines, again through cooperation with Germany, the Republic of Korea and UNDP. Advisory services will also be provided to Zambia financed by UNDP for the setting-up and initial functioning of a RBP control authority.

33. UNCTAD is conscious of the need to use the limited funds available as effectively as possible - for example, the Malaysian Seminar (25-27 January 1994) and Fiji Seminar (1-3 February 1994) were held back-to-back in order to economize on travel expenses; the two China workshops took place back-to-back, as well as the World Bank-UNCTAD Conference in Bogotá, Colombia (16-17 June 1994), the Seminar in Jamaica (20-21 June 1994) and the one in Trinidad and Tobago (23-24 June 1994).

34. Additional requests have recently been received from:

- Malta, Mongolia, Nicaragua, Peru, St. Lucia (for training and seminars); Ecuador, Bolivia, El Salvador, Trinidad and Tobago (for advice on drafting legislation);

- The Common Market for Eastern and Southern Africa (COMESA), which is proposing a three-day seminar, to take place in Lusaka (Zambia), for all member countries of PTA/COMESA.

35. Requests from other countries are expected shortly. The growing number of requests for technical cooperation in the area of competition policy is due to the interest among member States in this issue in relation to the market-oriented economic reforms being undertaken in many countries. The ability to respond promptly and fully to these requests depends to a considerable extent on the timely availability of adequate resources. In particular, the secretariat would not be in a position to respond to most of the requests received unless substantial resources can be mobilized.

36. The orientations of UNCTAD's future technical cooperation in the area of competition will broadly follow those already established, i.e. sensitizing of Governments, drafting of legislation and institution-building. Specific activities will depend on the needs and requests of individual countries. One activity that might be developed further, should adequate resources be made available, is the implementation of regional or subregional projects, along the lines of the proposed project for Latin America and the Caribbean. Such projects enable technical cooperation for countries within a region to be grouped together and to be undertaken in an integrated, balanced and harmonized manner, thus maximizing the impact of limited resources.

37. In undertaking its technical cooperation activities in this area, UNCTAD might also strengthen coordination and cooperation with other international organizations, in line with the agreed conclusions adopted by the Intergovernmental Group of Experts at its twelfth session. The seminar in Colombia jointly organized by UNCTAD, the World Bank and the Colombian Superintendency of Industry and Commerce provides an example of such cooperation.

Notes

1/ General Assembly resolution 35/63 of 5 December 1980 (TD/RBP/CONF.10/Rev.1).

2/ Part D of annex I to the Report of the Intergovernmental Group of Experts on Restrictive Business Practices on its twelfth session, TD/B/40(2)-TD/B/RBP/98.

3/ For a report on the preceding period 1992-1993, see "Activities relating to specific provisions of the Set: technical assistance on restrictive practices" (TD/B/RBP/97).

4/ See "Activities relating to specific provisions of the Set: (d) Technical assistance, advisory and training programmes on restrictive business practices" (TD/B/RBP/90), table at pp 11 and 12 "Status of RBP technical assistance programmes".

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